

JAN 13 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PEDRO CORNEJO-TOVAR,

Defendant - Appellant.

No. 04-30458

D.C. No. CR-03-00050-DWM-03

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

Pedro Cornejo-Tovar appeals from the 240-month sentence imposed following his guilty plea conviction for conspiracy to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and 846. We have jurisdiction pursuant to

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

21 U.S.C. § 1291, and we affirm.

We reject appellant's contention that 21 U.S.C. § 851 violates the separation of powers doctrine. *See United States v. Jensen*, 425 F.3d 698, 706-07 (9th Cir. 2005).

We also reject appellant's contention that he is entitled to remand pursuant to *United States v. Booker*, 543 U.S. 220 (2005). *Booker* does not upset the prior conviction exception carved out in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *See United States v. Brown*, 417 F.3d 1077, 1078-79 (9th Cir. 2005) (per curiam). Further, because appellant was sentenced pursuant to a statutory mandatory minimum which exceeded the guideline range, his sentence is not affected by *Booker*. *See United States v. Dare*, 425 F.3d 634, 643 (9th Cir. 2005).

AFFIRMED.